

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2591 of 1987  
with  
SPECIAL CIVIL APPLICATION No 3048 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAMANBHAI JERAMBHAI PATIL

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR SAURABH MEHTA for MR YN OZA for Petitioner  
MR PREMAL JOSHI AGP for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 30/06/2000

COMMON ORAL JUDGEMENT

#. Special Civil Application No. 2591/87 filed by a Police Sub Inspector was placed before the learned Single Judge on 25.6.87, wherein the Court issued notice

returnable on 6.7.87. It appears that on 14.7.87, the Court issued Rule and granted interim stay as regards recovery of economic rent. Special Civil Application No. 3048/91 was filed on 25th April, 1991. The learned Single Judge passed an order in the said application as under.

"Rule. To be heard along with Special Civil Application No. 2591/87. Interim stay as regards recovery of economic rent."

#. In Special Civil Application No. 2591/87, the petitioner who was initially working as Police Head Constable was selected for the post of Police Sub Inspector on 28.4.81. He was sent to Police Training School for training. The petitioner was thereafter transferred to various places. On completion of training, the petitioner who was occupying the quarter, retained the said quarter with him without submitting any application to the competent authority for permitting him to occupy the quarter. It appears that the petitioner approached the Civil Court, by filing Regular Civil Suit No. 601/86, challenging the order No. MCN/CB-1/Rahenak/7083/86, dated 4.4.86. The said Civil Suit came to be dismissed on 29.8.86 and it is thereafter the petitioner approached this Court by filing this petition under Article 226 of the Constitution of India. Vide Annexure:A, dated 2.12.86, the petitioner was informed that despite the notice given to him to vacate the quarter, he has not vacated the quarter and no permission has been granted by the competent authority to occupy the quarter after the transfer. Despite the fact, the petitioner was relieved on 28.4.81, he did not hand over possession of the quarter as per the rules.

#. Government servants are allocated quarters, but at the same time, when the govt. servant is transferred, he is required to vacate the quarter. One must note that on transfer from place A to B if one is not vacating the quarter at place : A, the person who is posted at place A will not be in a position to get the quarter. In view of the scarcity of residential accommodation, particularly in the city, govt. servants in the lower category cannot afford housing facility at higher rent and therefore, the government considering the various aspects, took a decision and issued a resolution for permitting the govt. servants to occupy the quarter only for a limited period. Such resolution is placed before me which is dated 22nd October, 1982. The resolution states amongst other things that :-

"It has however been noticed that the govt.

servants continue to retain and occupy the govt. accommodation unauthorizedly either by paying rent or not and do not vacate the quarters after their transfer, retirement, death etc., even if allotment is cancelled and eviction order issued with the result that the govt. servants who are eligible for allotment of govt. accommodation have to keep waiting for quite a long time thereby causing inconvenience and payment of extra cost for hiring private accommodation."

Keeping various aspects in mind, it was decided by the government that in case of resignation, dismissal or removal or termination of service, permissible period of retention of a quarter should be prescribed. In case of death of a govt. servant, the period of retention of a quarter was 4 months. In the case of transfer to a place outside the station two months' time was granted to the govt. servant to occupy the quarter. The Court is not concerned with other categories and therefore, the same are not referred. Suffice it to say that in the instant case, the petitioner was transferred from Surat to other place, however, he did not hand over possession of the quarter and therefore, he was required to pay the rent as determined by the competent authority as per the prevalent rules.

#. It is required to be noted that in the instant case, the petitioner approached the Civil Court and the Civil Court dismissed the suit of the petitioner. Learned advocate for the petitioner submitted that the petitioner approached the Civil Court for the purpose of restraining the respondents from compelling him to vacate the quarter and not for the purpose of restraining the respondent from recovering the amount of economic rent.

#. The petitioner should have produced on record, a copy of the letter dated 4.4.86, which was produced by him before the Civil Judge (Senior Division). In the petition, the petitioner has stated that he approached the Civil Court and thereafter on dismissal of the suit, he handed over possession of the quarter. The petitioner approached the Civil Court earlier, then in such a case, what the Apex Court has stated is required to be born in mind. The Apex Court in the case of Durga Prasad v. Naveen Chandra, reported in (1996) 3 SCC 300, has pointed out that the order dismissing the application was not appealable either under section 96 or under Order 43 Rule 1 read with Section 104 of the Civil Procedure Code but

still revision under section 115 of Civil Procedure Code would be maintainable and whether the order could be revised or not was a matter to be considered by the High Court on merits. The Supreme Court pointed out that instead of availing that remedy, invoking jurisdiction under Article 226 was not warranted. The procedure prescribed under the C.P.C. cannot be bypassed by availing of the remedy under Article 226. In the case of *Sheela Devi v. Jaspal Singh*, reported in (1999) 1 SCC 209, the Supreme Court has held that the High Court wrongly exercised its writ jurisdiction when an alternative statutory remedy of revision was available. No reason was given by the respondent for not availing of the remedy of revision under section 18 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The respondent straightaway filed a writ petition before the High Court where the High Court re-examined the facts.

#. Thus, when an alternative remedy is provided under a statute, it becomes the duty of the aggrieved party to approach that forum instead of rushing to the High Court by filing a petition under Article 226 of the Constitution of India. In the instant case, as pointed out, the aggrieved party was entitled to approach the higher forum questioning the dismissal of suit. Thus, though alternative remedy was available to the petitioner, the petitioner has not chosen to avail of that remedy, and therefore, this petition must be dismissed on this ground alone.

#. The petitioner despite transfer, continued to occupy the quarter without any permission. Learned advocate appearing for the petitioner submitted that at the relevant time, his wife was pregnant and therefore, it was impossible to vacate the quarter. If on this ground an application would have been made for occupying the quarter for a longer period, the authority would have considered and this aspect would have been taken into consideration. In the instant case, within a reasonable period, after delivery of a child, possession of the quarter could have been handed over to the government. But that is not done. No evidence is placed before the Court about the condition of the wife of the petitioner. Therefore, the present petition being Special Civil Application No. 2591 of 1987 is dismissed.

#. So far as Special Civil Application No. 3048/91 is concerned, what the petitioners have averred in paras 3,4,5,6 and 7 is as under.

- "3. The petitioners state that petitioner no.1, who is a police head constable is residing since more than ten years at Ahmedabad in Ranip Police Lines. He was transferred from Ahmedabad to Jetalsha and thereafter from Jetalsha to Sabarmati. However, during all these period, family of the petitioner no.1 was staying and is staying in the Police Lines, Ranip, in Ahmedabad.
4. That petitioner no.2, Kantilal Bhavsing, who is a Police Constable, is residing since more than ten years at Ahmedabad in Ranip Police Lines. He was transferred from Ahmedabad to Sabarmati. During all these period, he and his family was and is staying in the police lines, at Ranip, in Ahmedabad.
5. Petitioner no.3, Chandrasing Arjunsing who is a police constable, is residing since many years and in any case more than ten years in Ranip Police Lines, Ahmedabad. He was transferred from Ahmedabad to Palanpur and thereafter from Palanpur to Surendranagar. His family was staying in the Police Lines, Ranip, at Ahmedabad and even now they are staying in the same Police Lines.
6. Petitioner no.4 Devendrasinh Moodsinh is residing at Asarwa Police Lines since more than 5 years. He was transferred from Ahmedabad to Radhanpur and thereafter from Radhanpur to Sabarmati. All these period, the family of petitioner no.4 was residing in the said police lines and even now they are staying there.
7. Petitioner no.5, Shantaben Arvindbhai, who is a woman constable, is residing at Asarwa Police Lines since more than 5 years. She was transferred from Ahmedabad to Sabarmati and thereafter from Sabarmati to Mehsana. All these times, her family was residing in Asarwa Police. Even now her family is staying in Asarwa Police Lines, Ahmedabad."

Thus, absolutely vague petition is filed before the High Court giving no details as to when the persons were transferred from one station to other station and from where, they were again transferred to some other place.

They have not given details about the fact as to whether the petitioners had submitted any application to the competent authority for retaining the quarter. It appears that merely because they were occupying govt. quarters in Ahmedabad and they or their family members were busy with some activities in Ahmedabad, they were not inclined to vacate the quarters. Ordinarily if a head of the family is transferred, it is expected that the family members would join unless some extraordinary reason is there. No such reason is disclosed by any of the petitioners. Therefore, the only inference can be drawn that all the petitioners were interested in occupying the quarters at Ahmedabad and therefore, they were not vacating the quarter. Learned advocate submitted that on 7.2.85, a circular was issued by the office of the Special Chief Police Officer, Armed Section, Gujarat State. That circular has reference to Group 11,12 and 13. The groups were brought in existence very recently and as the housing accommodation was not available to Constables of State Reserve Police Force, instructions were given that they may be permitted to occupy the quarter till the housing accommodation is provided for these three groups. As the persons working in the CRPF who are Armed Police Constable and are required to discharge their duties in altogether different way than the Police Constables in the ordinary Police Force are required to discharge, it cannot be said that the same circular should be made applicable to all police personnel. It cannot be said that the Police Constables are justified in occupying the quarter till the quarters are made available to them at the new place. It is required to be noted that if the quarter is not made available, other facilities are provided i.e. H.R.A. Therefore, there is no substance in the argument advanced by learned advocate for the petitioner. In view of such a vague petition, it should not be entertained and on that ground, this petition is also required to be dismissed.

#. The State Government issued a resolution on 22.10.82 laying down criteria for occupying the quarter. In case of transfer, if an employee retains the government quarter without prior permission, then he has to pay rent. It was noticed that in many cases employees continue to occupy the quarters unauthorisedly after their transfer as a result, the employees who were eligible to get the govt. quarter were deprived of the housing facility, causing lot of inconvenience and loss. They were required to hire residential accommodation at extra ordinary cost. From cities if the employees are transferred and are retaining the quarters, the innocent

eligible and the persons appointed/transferred to cities would suffer a lot. The Court has to keep this in mind. The innocent hopeful allottees are not before the Court and their interest is also required to be protected. When the decision is taken which is made applicable to all, there should be no interference. Even the competent authority could not have extended the period, longer than the one fixed as per resolution. In a petition under Articles 226 or 227 of the Constitution of India, above aspects are required to be taken into consideration. For unauthorised occupation, rent fixed by the competent authority must be recovered. State should not suffer at the hands of the people who were asked to see that others are acting according to law and they cannot be permitted to breach the policy which is in the interest of all the employees.

##. Division Bench of this Court in L.P.A. No. 608 of 1997 decided on 12.1.2000 considered the question of retention of the quarter beyond the period of two months in case of transfer of a police personnel who was held to be unauthorised occupant and considering the resolution of 1982, Court held that the retention of a quarter beyond the period of two months was unauthorised and occupant was required to pay rent thus, the petitioners continued to occupy the quarters without any authority and must be treated as unauthorised occupants of the quarters liable to pay rent in accordance with law.

##. I have indicated earlier that the onec a govt. servant is transferred, he has to vacate the quarter as per the policy of the government, failing which he is required to pay the amount fixed by the government.

#. No illegality is pointed out by the learned advocate for the petitioner and therefore, I find no merits in this petition also. Both the petitions are therefore dismissed. Interim relief stands vacated forthwith. Rule discharged in both the petitions.

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